

These are the tentative rulings for civil law and motion matters set for Friday, March 27, 2015, at 11:00 a.m. in the **TAHOE DIVISION** (Department 14) of the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m., Thursday, March 26, 2015. Notice of request for oral argument to the court must be made by calling (530) 584-3463. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER TRILLA E. BAHRKE AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 14, LOCATED AT 2501 N. LAKE BLVD., TAHOE CITY, CALIFORNIA.

1. T-CV-0001983 Laconico, Purisima C. vs. Pennymac

Appearance is required for hearing on defendant PennyMac Holdings, LLC's demurrer to the complaint. The notice of demurrer omits the mandatory tentative ruling advisement required by Local Rule 20.2.3(C)(2). Counsel for defendant has arranged a telephone appearance through the court's phone appearance system. Plaintiff may appear by phone upon making appropriate arrangements pursuant to Local Rule 20.8.

As a preliminary matter, the opposition by plaintiff has not been considered as it was filed substantially untimely (filed March 24, 2015, although due March 16, 2015). C.C.P. § 1005(b).

In ruling on the demurrer, the complaint is liberally construed with all inferences drawn "favorable to the plaintiff, not the defendant." Perez v. Golden Empire Transit Dist. (2012) 209 Cal.App.4th 1228, 1238. All well-pleaded facts, however improbable they may be, are assumed to be true. Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal.App.3d 593, 604. The demurrer tests only the sufficiency of the allegations of the complaint; it is not a substitute for summary judgment and the court does not weigh defendant's factual narrative against plaintiff's.

The demurrer to the first cause of action for wrongful eviction is sustained. A statutory claim for damages under Civil Code section 789.3 requires allegations that (a) defendant and plaintiff were in a landlord-tenant relationship (although neither *landlord* nor *tenant* is defined in the statute), (b) plaintiff was in a "lease or other tenancy or estate at will," (c) plaintiff occupied the property as her residence, (d) defendant committed one of several enumerated wrongs, and (e) defendant did so with the intent to terminate occupancy under the tenancy. Civ.C. § 789.3(a)-(b). Subject wrongful conduct includes interrupting or terminating utility service, preventing tenant from gaining access to the premises, removal of doors or windows, or removal of personal property of plaintiff. Id.

The claim alleges plaintiff occupied the premises as a tenant under an alleged written lease (Complaint ¶ 5). The complaint also alleges that plaintiff sublet the home to offset costs (¶

6), and alleges that defendant changed the locks while plaintiff was traveling, intending to cause her emotional distress and unspecified harm (§§ 7-11). No copy of the alleged lease is attached to the complaint, and its terms are not described with sufficient detail for defendant to determine what contract, if any, is alleged. There are no well-pleaded allegations of any other "tenancy or estate at will." The allegations of occupancy are contradictory (plaintiff occupied but also sublet the premises) and are insufficient to allege plaintiff occupied as her personal residence. Thus, the allegations are insufficient to state a claim under Civil Code section 789.3.

The demurrer to the second cause of action for fraud is sustained. The only alleged misrepresentation is that defendant "represented to Plaintiff's agents that they were seeking rental information" (§§ 19, 21)—an allegation far too vague and ambiguous to plead a fraud claim. The allegations omit any actual statements, including when, by whom or to whom they were made. The cause of action includes none of the additional information required when pleading fraud against an entity defendant. Tarmann v. State Farm Mut. Auto Ins. Co. (1991) 2 Cal.App.4th 153, 157.

The demurrer to the third cause of action for intentional infliction of emotional distress is sustained. The cause of action refers to alleged misconduct previously pleaded; accordingly, the only alleged misconduct is changing locks on an unoccupied residence and a vague representation about seeking rental information. (See §§ 5-11, 19 & 21.) Nothing in these allegations appears to constitute extreme or outrageous conduct on the part of plaintiff.

The demurrer to the fourth and fifth causes of action for negligent infliction of emotional distress and negligence is sustained. These claims require pleading of the elements of negligence, including a duty on the part of defendant to plaintiff, breach of that duty, causation, and resulting harm to defendant. People v. Young (1942) 20 Cal.2d 832. The complaint is insufficient to allege any of these elements of negligence.

The plaintiff bears the burden of showing how the complaint could be amended to cure defects subject to demurrer. Goodman v. Kennedy (1976) 18 Cal.3d 335, 349. Plaintiff has not made any showing how the complaint can be cured by amendment. Accordingly, leave to amend is denied.

The request for judicial notice is granted as to exhibits 1-5, 16, 22-24 & 26-27; however, the court does not assume the truth of any contents of said exhibits. The request for judicial notice is denied as to exhibits 6-15, 17-21, 25 & 28-29.

The request for an order expunging lis pendens is denied. Such relief is not available on a demurrer. No motion to expunge lis pendens has been filed or served.

These are the tentative rulings for civil law and motion matters set for Friday, March 27, 2015, at 11:00 a.m. in the TAHOE DIVISION (Department 14) of the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m., Thursday, March 26, 2015. Notice of request for oral argument to the court must be made by calling (530) 584-3463. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

